

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12324 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

NIRANJAN MILLS

Versus

STATE OF GUJARAT

Appearance:

MRS KETTY A MEHTA for Petitioner
MR UR BHATT, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 14/02/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Rule. Mr. U.R.Bhatt, learned A.G.P. waives service of rule on behalf of the respondents.

Having regard to the facts of the case, the petition is taken-up for final hearing today.

2. In this petition under Article 226 of the Constitution, the petitioner i.e. Niranjani Mills at Surat has challenged the recovery notice dated 28.11.2000 issued by Sales-tax Officer (1), Class-1, Unit-12, Surat (Annexure-T to the petition) calling upon the petitioner to refund the amount of sales tax benefits obtained by the petitioner under the incentive scheme for industries on account of breach of conditions subject to which the benefits were granted. The petitioner has also prayed for a declaration that the petitioner-Company is entitled to exemption from payment of sales-tax under the sales-tax incentive scheme for wind power generation for a period of six years with effect from 30.9.1994. The petitioner has further prayed for refund of the amount of Rs.4,25,000/- paid by the petitioner towards the sales-tax dues for the period between June, 1998 to November, 1999 under protest.

3. In response to the notice issued by the respondents, affidavit-in-reply has been filed on behalf of the respondents justifying the impugned decision on merits. It is also stated that the petitioner was granted installments for making payment and on that condition, bank attachment was lifted. It is further stated that recovery proceedings were initiated before the petitioner made application dated 20.11.2000 before the Board for Industrial and Financial Reconstruction (B.I.F.R. for short) constituted under the Sick Industrial Companies (Special Provisions) Act, 1985.

4. In view of the course which we propose to adopt, it is not necessary to refer to all the averments made and contentions raised in the petition, since the learned counsel for the petitioner points out that the decision taken by the respondents-authorities against the petitioner (to the effect that the petitioner has committed breach of the conditions subject to which sales-tax benefits were given) is already challenged by the petitioner in appeal and the appeal is still pending as stated in Para-18 of the petition. As the petitioner has already availed of the alternative remedy, this petition is not required to be entertained.

5. The learned counsel for the petitioner, however,

submits that the petitioner has already made an application for obtaining interim stay before the Appellate Authority on 10th July, 2000, but the same is not decided and inspite of the clear provisions of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter to be referred to as the "Act") the respondents are proceeding with the coercive recovery.

6. Section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 reads as under :

"22. Suspension of legal proceedings, contracts, etc. (1) Where in respect of an industrial company, an inquiry under section 16 is pending or any scheme referred to under section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956, or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof (and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority."

Section 16 of the Act reads as under :

"16. Inquiry into working of sick industrial companies : (1) The Board may make such inquiry as it may deem fit for determining whether any industrial company has become a sick industrial company-

- (a) upon receipt of a reference with respect to such company under section 15; or
- (b) upon information received with respect to such company or upon its own knowledge as to the financial condition of the company.

(2) The Board may, if it deems necessary or expedient so to do for the expeditious disposal of an inquiry under sub-section(1), require by order any operating agency to enquire into and make a report with respect to such matters as may be specified in the order.

(3) The Board or as the case may be, the operating agency shall complete its inquiry as expeditiously as possible and endeavour shall be made to complete the inquiry within sixty days from the commencement of the inquiry.

Explanation : For the purposes of this sub-section, an inquiry shall be deemed to have commenced upon the receipt by the Board of any reference or information or upon its own knowledge reduced to writing by the Board.

(4).....

(5)

(6)"

(emphasis supplied)

7. In view of the undisputed fact that the petitioner has already moved the B.I.F.R. and that the Reference to the B.I.F.R. has already been registered as Case No. 144/2000 (Annexure-A to the petition) and in view of the provisions of Section 22 read with the Explanation to sub-section (3) of Section 16 of the Act, it is obvious that the respondents cannot take coercive steps for recovery of the dues from the properties of the petitioner-Company and accordingly, the respondents shall have to be restrained from proceeding with the coercive recovery of their dues, during the pendency of the Reference before B.I.F.R. However, in view of the provisions of section 22 of the said Act, liberty shall also have to be reserved to the respondents to approach B.I.F.R. for continuing with the recovery proceedings.

8. In view of the above discussion, the respondents are restrained from continuing with the recovery proceedings arising from the decision of the respondents to withdraw the sales-tax benefits (on the ground that the petitioner has committed breach of conditions subject to which the sales-tax benefits were granted to the

petitioner) till pendency of the Reference before B.I.F.R. It is, however, open to the respondents to approach the B.I.F.R. for permission to continue with the recovery proceedings against the petitioner.

In case the proceedings before B.I.F.R. conclude prior to disposal of the appeal filed by the petitioner before the Deputy Sales-Tax Commissioner, it would be open to the petitioner to move the Appellate Authority for interim stay, which shall be decided by the Appellate Authority within 15 days from the date of filing of such application for interim stay.

9. It is clarified that since we have disposed of the petition on the ground that the appeal filed by the petitioner against the impugned orders is already pending before the Appellate Authority, we do not express any opinion on merits of the controversy which was sought to be raised in the petition.

10. Rule is made absolute to the aforesaid extent only, with no order as to costs.

(J.M.Panchal,J.) (M.S.Shah,J.)

(patel)